



DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
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TO: Prospective Wetlands Bankers and Consultants

FROM: J. Robert Hume, Regulatory Branch Chief, Norfolk District Army Corps of Engineers

Catherine Harold, Virginia Water Protection Permit Program, Department of Environmental Quality

RE: Suggestions for Proposing Mitigation Banks

Both the Corps and DEQ support the use of mitigation banks as a form of compensatory mitigation, as appropriate and in accordance with all applicable state and federal laws and regulations. Over the past few years, Virginia has seen a large increase in both the number of approved mitigation banks and in the number of proposed banks. Some areas of Virginia have multiple banks with several hundred mitigation credits available within a watershed. Given the number of banks currently on-line, as well as the number of proposals we receive for review, it is important to coordinate with the regulatory agencies early in the process to determine if you have a viable bank proposal, prior to committing significant time and resources to a particular site. We offer the following "Mitigation Bank Do's and Don'ts" to assist you with the process.

DO

1. Familiarize yourself with the Federal Guidance on Wetland Mitigation Banks

(<http://www.iwr.usace.army.mil/iwr/Services/PDCPNWetlandsM.htm>),

the 2002 Corps Regulatory Guidance Letter 02-02 on compensatory mitigation

(http://www.usace.army.mil/inet/functions/cw/hot_topics/RGL_02-2.pdf),

and state law governing mitigation banking, VA Code Ann. Sections 62.1-44.15:5

(<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15C>). The principles outlined in these references are important to understand before undertaking a bank project.

2. Provide the agencies with basic site information, such as:

- locating the site on a USGS topographic map, a National Wetland Inventory map, and a soil survey map;
- providing narrative descriptions of the site, its soils, and other general features;
- providing narrative descriptions of the proposed goals and preliminary design ideas (this does not entail detailed engineering studies).
- providing a narrative description of the current and anticipated use of adjoining lands,
- providing an estimate of what impacts (if any) to wetlands or other waters of the U.S. are anticipated to be necessary to create/restore/enhance wetlands or other waters associated with the proposed bank.

3. Schedule a pre-application site visit with the agencies (at a minimum, the Corps and VDEQ) early in the process and prior to spending significant funds for land purchase, detailed engineering, or other specialized studies. Often, the agencies will be able to provide you some direction for more detailed work before you spend a lot of time and money on a site that may not work.
4. Realize that landscape position and future land use is essential in locating a potentially viable bank site. Adjacency to rivers, streams, forested areas, drained agricultural areas, potential developments, or other wetlands should be considered before using just any available parcel. Just because it may be feasible to create wetlands on a particular property does not mean that the site is suitable for use as a bank (it may result in an artificial or “unnatural” wetland in the landscape with limited opportunities to provide recognized wetland functions).
5. Realize that habitat diversity is a key to the overall success of the proposed bank. Habitat diversity is strongly encouraged, and may include some upland buffers, some open water, or different wetland types.
6. Realize that wetland bank development and wetland permitting are two different processes; very little overlap exists.
7. Understand that a Mitigation Bank Review Team (MBRT) must be formed and the Mitigation Banking Instrument (MBI) must be signed, financial assurances must be in place, and any deed restrictions or conservation easements must be recorded prior to the release or sale of any credits.
8. Consider options for long-term ownership/stewardship of the mitigation bank site for that period after all bank credits have been sold.

DON'T

1. Expect that because you or your client have acquired a particular property, that it will necessarily be approved by federal and state regulatory agencies for use as a wetland mitigation bank. Regulatory agencies have limited resources, and time and effort shall be delegated to those bank sites that have a greater likelihood of successfully achieving wetland conditions.
2. Expect that a bank in a particular location guarantees economic success. Many other factors are involved in the wetland permitting process and the local planning process.
3. Propose preservation-only sites for wetlands or streams. While preservation of these areas as part of the bank is valuable, the majority of the site (usually, greater than 80% of the bank's credits) must consist of wetland restoration in order to meet the “no net loss” goal.
4. Propose bank sites based solely on creation of wetlands from upland areas. Based on experience, creation of wetlands from upland areas, especially when not adjacent to other wetlands, is often difficult to achieve and time consuming. When approving a mitigation bank, we are looking for a high degree of certainty in achieving wetland conditions as quickly as possible; therefore, we will generally not approve banks that involve creation only.
6. Assume that an MBI is entirely a boilerplate document. MBIs are tailored to each bank's site-specific circumstances; much of the language has been standardized, where possible. Examples

of bank-specific issues that need to be addressed include bank service area, credit composition, percent of advance credit, and performance standards.

7. Expect that a bank will necessarily provide compensation for the whole spectrum of potential wetlands/waters impacts in a given service area. The decision to use a bank as a compensation alternative rests solely with the regulatory agencies (after considering input from the advisory agencies). The presence of a bank with available credits does not override the goal of in-kind compensation.

8. Overlook the possible need for detailed soils, geotechnical or hydrology studies to assure the MBRT that the bank design will work.

9. Assume that each and every bank will receive 15% advance credits. The percentage of advance credits depends on the likelihood and timing of achieving success. Advance credit percentages may be reduced or even eliminated, if site-specific circumstances suggest a more speculative design.

We hope that you find these suggestions useful as you review potential banking sites. Please do not hesitate to call the Corps or DEQ for a site review, or if you have further questions.